

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
vs.)
) No. 1:16-cr-10134-DPW
)
DAVID TKHILAISHVILI AND)
JAMBULAT TKHILAISHVILI,)
)
Defendants.

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

CONTINUATION OF SENTENCING HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, MA 02210
Tuesday, December 19, 2017
10:10 a.m.

Brenda K. Hancock, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way
Boston, MA 02210
(617)439-3214

1 APPEARANCES:

2 UNITED STATES ATTORNEY'S OFFICE
3 By: AUSA Laura Kaplan
4 John Joseph Moakley Federal Courthouse
5 1 Courthouse Way
6 Suite 9200
7 Boston, MA 02210
8 On behalf of The United State of America.

6 FEDERAL PUBLIC DEFENDER OFFICE
7 By: Oscar Cruz, Jr., Esq.
8 District of Massachusetts
9 51 Sleeper Street
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12 On behalf of the Defendant.

11 HEDGES & TUMPOSKY, LLP
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1 (The following proceedings were held in open court
2 before the Honorable Douglas P. Woodlock, United States
3 District Judge, United States District Court, District of
4 Massachusetts, at the John J. Moakley United States Courthouse,
5 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on
6 Tuesday, December 19, 2017):

7 THE CLERK: All rise.

8 (The Honorable Court entered the courtroom at 10:10 a.m.)

9 THE CLERK: This Honorable Court is now in session.
10 Please be seated. Criminal Action Number 16-10134, United
11 States v. Tkhilaishvili.

12 THE CLERK: Mister Interpreter, please raise your
13 right hand.

14 (Interpreter duly sworn by the clerk)

15 THE CLERK: Please be seated.

16 THE COURT: Well, I want to see if I can get this back
17 on track a bit as a result of the supplemental Rule 29 motion,
18 and I guess I have to ask Mr. Cruz why it wasn't raised at an
19 earlier stage.

20 MR. CRUZ: Your Honor, this was an issue that was
21 discussed between myself and David Tkhilaishvili sometime after
22 the jury was released and the verdict entered. I had discussed
23 with Mr. Tkhilaishvili the pros and cons of raising the issue
24 at that point in time and also looked into it further to see if
25 it, quite frankly, had any merit. I brought it before the

1 Court's attention because, upon review of the case record or
2 the trial record, it became apparent to me that HMG was a
3 separate business entity.

4 THE COURT: Well, but what is the con of raising it,
5 and why it wouldn't have been clearer earlier?

6 MR. CRUZ: Quite frankly, your Honor, because I didn't
7 spot that issue, and if Mr. Tkhilaishvili did and brought it to
8 my attention I felt I was obligated at least to bring it to the
9 Court's attention if I thought that it had some merit.

10 THE COURT: So, Ms. Kaplan, I guess the issue for me
11 is this; that this goes to the question of whether the statute
12 itself applies, and while I understand Rule 29 to be designed
13 to encourage prompt framing of the issues here or in any
14 criminal case, I do not know why as a practical matter I should
15 not address it at this stage. By ruling adversely to the
16 defendant, it becomes an issue framed for appeal. You have
17 made clear your view that it is untimely. That is one of your
18 grounds but not the only ground. If I rule favorably to the
19 defendant, then the issue is teed up for the Court of Appeals
20 to take up if the Government chooses to cross-appeal with
21 respect to it.

22 I am not sure I see, except a kind of, I will call it
23 a wooden adherence to a time frame, a reason not to take it up
24 here. If it were some other kind of issue that did not go
25 right to the core of whether or not federal jurisdiction is

1 proper here I might feel differently about it, but this goes to
2 the core of it, I think.

3 If there is anything else you want to say, I think you
4 know where I am going, but if there is something I am missing
5 there on that aspect of it, I would like to know.

6 MS. KAPLAN: No, I don't think so, your Honor, and
7 that's why I did address it in the Government's response and I
8 addressed the merits.

9 THE COURT: Right. So, let me go to the merits of
10 this. Why isn't it the case that with respect to Count Four
11 that this is embezzlement but it is not federal embezzlement,
12 it is embezzlement from a separate entity. A separate entity
13 has control of these funds. The funds may have a purpose of
14 serving the health care institution that is within the scope of
15 the federal statute, but I have some difficulty, now that it
16 has been framed.

17 Thinking about this as anything other than state fraud
18 or state embezzlement and nothing else. So, let me understand
19 that.

20 MS. KAPLAN: I think, your Honor, because I think what
21 strikes me, your Honor, is that this defendant set up these
22 accounts. This isn't somebody who took a draw from an account
23 that he didn't realize was a health care benefit program. He
24 knew that all of the money in the HMG account came from the
25 Allied Health account, which was clearly monies that were

1 earmarked as monies of a health care benefit program.

2 THE COURT: But were they monies of a health care
3 benefit program? As a practical matter, could the health care
4 benefit program -- I understand that maybe I should not say,
5 "As a practical matter," I should say as a structural matter
6 the monies of the health care benefit program couldn't force
7 HMG to give it back to them, could they, the \$2,000?

8 MS. KAPLAN: Well, I think they could.

9 THE COURT: How?

10 MS. KAPLAN: I think that what's also important is
11 that the transaction occurred -- was at the direction of David
12 Tkhilaishvili. It happened on the same day. He realized that
13 there wasn't enough money in the HMG account, because it was
14 solely funded by the Allied Health account, so he took the
15 money. He caused the money, which were health care benefit
16 program monies from the Allied Health account, to be put into
17 the HMG account, to then be put into the payroll account. So,
18 he knew that those monies were monies that he was taking from
19 Allied Health Care, which was a health care benefit program,
20 and he purposely put them in the HMG account to go into the
21 payroll account.

22 THE COURT: Is the movement of the funds into the HMG
23 account itself fraud? I say "fraud." I mean embezzlement.

24 MS. KAPLAN: Yes.

25 THE COURT: Because that is what is charged here. HMG

1 is there to receive monies from --

2 MS. KAPLAN: Allied Health.

3 THE COURT: -- Allied Health for its payroll. He is
4 in a position to make that choice. It's a two-stage process.
5 I understand that. The question is whether or not the
6 formalities of separate corporate entities make a difference
7 here. And so, I will break it up into two parts; the first
8 part being a person with authority to make the transfer, which
9 he had, I believe --

10 MS. KAPLAN: Yes.

11 THE COURT: -- orders the transfer to be made. If the
12 monies from HMG had been used for appropriate payroll purposes,
13 not the one that actually took place, but appropriate payroll
14 services, that wouldn't be embezzlement, right?

15 MS. KAPLAN: Correct.

16 THE COURT: So, the point of embezzlement, the mode of
17 embezzlement is with H M G paying out here.

18 MS. KAPLAN: Correct.

19 THE COURT: And that seems to me to be state court
20 embezzlement.

21 MS. KAPLAN: Well, no. I think the embezzlement comes
22 when he has Allied Health transfer the monies into the HMG
23 account into the payroll account, because he knows what he's
24 doing. He knows that the monies that he's transferring from
25 Allied Health are monies that are appropriated from a health

1 care benefit program.

2 THE COURT: But that is why I asked the question
3 earlier of assume that he does make the transfer. Assume that
4 the transfer, just for purposes at the time of transfer it
5 could equally be used for his special use or for a general
6 payroll, which is the appropriate use under these circumstances
7 for whoever does work for Allied Health.

8 MS. KAPLAN: Correct.

9 THE COURT: So, it is the payout from HMG that is the
10 embezzlement, and it is no longer within the scope of Allied
11 Health. I guess that is my concern here. There is a reason
12 for the formalities to be observed. The federal criminal
13 jurisdiction does not extend generally to all sorts of
14 embezzlement that is associated with health care; it deals with
15 the particular entities themselves, I think. And so, that is
16 why I am, now focused on it, a bit puzzled by how to treat
17 this. Not really puzzled, but I think that it properly has to
18 be said that this particular transaction itself is not a
19 federal criminal violation.

20 MS. KAPLAN: Well, I guess I don't agree. I think
21 that the embezzlement occurs when he causes the money to be
22 taken out of Allied Health. It's all in one transaction. And
23 he takes that money and has it put into --

24 THE COURT: That is not quite what is charged, is it?
25 What is charged is the payment to him. You see, if what were

1 charged were embezzlement by taking money out of Allied Health
2 and putting it into the health care, whatever it is called
3 again, HMG, if that were charged that would be a different
4 issue, because that is taking the money and putting it in HMG;
5 but what is charged, as I recall, is the transfer from HMG to
6 him.

7 MS. KAPLAN: I'd have to look at the indictment, but I
8 think it is from a health care benefit program. It's
9 embezzlement --

10 THE COURT: No. I think it talks about that
11 transaction out to him, but let me go back to the --

12 MS. KAPLAN: I don't have the indictment.

13 THE COURT: -- the indictment here.

14 (Pause)

15 MS. KAPLAN: I'm sorry. I don't have the indictment.

16 THE COURT: Okay. So, let me see if I can pull it up.

17 MS. KAPLAN: I think the language read exactly the
18 same way between Counts Three and Four.

19 THE COURT: Right, but the transaction is different.

20 (Pause)

21 THE COURT: Yes, I guess you are right, it is
22 capacious enough to deal with this. But let's, then, go to the
23 question whether there is a charge here. Let me just work
24 through it. There is a charge here that is cognizable by the
25 *Federal Criminal Code*, and it is the decision by

1 Mr. Tkhilaishvili to transfer from -- take the money out of
2 Allied Health and put it into the account in HMG --

3 MS. KAPLAN: Correct.

4 THE COURT: -- not the payment from HMG to him.

5 MS. KAPLAN: Correct. And they stipulated at trial
6 that Allied Health was a health care benefit program.

7 THE COURT: So, let me get back to this issue at
8 trial.

9 Assume, Mr. Cruz, that someone, Mr. Tkhilaishvili,
10 takes money out of Allied Health and puts into the payroll
11 account --

12 MR. CRUZ: Yes, your Honor.

13 THE COURT: -- as the first step in a scheme to get
14 the money to him personally. Why isn't that covered?

15 MR. CRUZ: Your Honor, I think the answer to that lies
16 in the way that the business structure was set up for both
17 Allied Health and HMG, which is that Mr. Tkhilaishvili, as the
18 Chief Operating Officer, had the ability or authorization from
19 Mr. Torosyan and the other co-owners of the business to
20 transfer money from one account, that being Allied Health, to
21 HMG.

22 THE COURT: Could he do that with fraudulent intent?

23 MR. CRUZ: Well, your Honor, I guess that is
24 something --

25 THE COURT: See, here is the issue or one of the

1 issues: There are these formalities. The formalities should
2 be observed. On the other hand, if someone is directing all of
3 this with a view toward extracting money from Allied Health for
4 ultimately his own personal benefit and the first step of that
5 is to exploit and manipulate these formalities by transferring
6 it into another entity and then the other entity is going to
7 pay him, I am not sure why that should not be within the scope
8 of 669. There is a transfer that can be treated as
9 embezzlement out of Allied Health. It would have to be out of
10 Allied Health, from my perspective, but it is a transfer out of
11 Allied Health.

12 MR. CRUZ: Yes, your Honor. And I think that's a
13 question of what the evidence supports in terms of
14 Mr. Tkhilaishvili's intent with regard to that transfer of
15 money, because, as I pointed out in the attachment with Granite
16 payroll records that were relevant to this transaction, not
17 only was Mr. Tkhilaishvili paid out at that point in November,
18 but several other employees of HMG were paid out, and with that
19 I guess the question is --

20 THE COURT: Well, but if it had been them, that is
21 different, but that is not what was alleged here. It is the
22 \$2,000 payment out --

23 MR. CRUZ: Correct.

24 THE COURT: -- which ended up in Mr. Tkhilaishvili's
25 hands, right?

1 MR. CRUZ: Yes. But I guess the point I am trying to
2 make is that the transfer of money for payroll purposes
3 generally was authorized, and then if he chooses to pay himself
4 \$2,000 out of a separate account for HMG I agree with what the
5 Court's saying, that could be seen as fraudulent with regard to
6 HMG.

7 THE COURT: So, where else could I have gotten it
8 wrong? Did I charge the jury improperly with respect to this?
9 I don't think so. I think it was a general charge on this. Is
10 there evidence from which a jury could find that this two-step
11 transaction was embezzlement? I think so. Now, things to
12 argue the other way say, "Well, he just tried to provide a
13 mechanism or conduit for payment, which is the role of HMG, to
14 pay payroll."

15 MS. KAPLAN: Your Honor, could I just add one fact
16 that also came out at trial, which is that the clinic's, Allied
17 Health Clinic's Operating Agreement provided that no member was
18 permitted to write checks in excess of \$1,000 without all of
19 the members' approval? So, he wasn't actually authorized to be
20 transferring this money.

21 THE COURT: That itself wouldn't be embezzlement. It
22 has to be part of a chain that led to an embezzlement by him.
23 That is to say, if he had done that without authorization -- I
24 will take your point about a \$1,000 cap on authorization --
25 that I don't think would have been an embezzlement.

1 MS. KAPLAN: No. It's just another factor that went
2 in, and I think Victor Torosyan testified that he had not given
3 Mr. Tkhilaishvili the authorization to take that money. So,
4 it's just another factor that goes into the defendant's intent,
5 I suppose.

6 THE COURT: Well, I am going to deny the Supplemental
7 Motion for Judgment of Acquittal focused specifically on
8 Count Four here. It is a multiple-stage process that
9 Mr. Tkhilaishvili engaged in, but the initial transfer was one
10 out of a health care benefit program with a view toward
11 embezzling from that program itself. So, I decline to grant a
12 judgment of acquittal on that count.

13 Now, does that substantively deal with all of the
14 outstanding issues? There is a question of forfeiture, but I
15 think that now is taken up by this; that is, there is a money
16 judgment forfeiture that flows from this.

17 MR. CRUZ: Yes, your Honor.

18 THE COURT: There is, in addition, Mr. Torosyan's
19 various filings claiming some sort of entitlement to particular
20 monies. They are pretty much barebones, and I just want to be
21 sure I have dealt with the question of restitution on this.

22 Ms. Kaplan, does the \$3,500 become restitution too, or
23 is it forfeiture or what?

24 MS. KAPLAN: I think it probably will become
25 restitution, your Honor. I think the additional monies that

1 Mr. Torosyan has requested, I don't think that they are a basis
2 for restitution, frankly.

3 THE COURT: Let me just be sure I've got them out
4 here.

5 MS. KAPLAN: It's the amount of monies that he put
6 into the clinic and never got back.

7 THE COURT: Right. He asked for \$20,000 for
8 December 2014 to January 2015 due to the defendant's actions.
9 I do not see that as restitutionary in this setting.

10 MS. KAPLAN: I don't either.

11 THE COURT: Then he asked for \$11,000 on August 2015.
12 Again, I am not sure I see that as restitution. I guess I
13 don't see the \$3,500 as restitution to him personally. It's
14 restitution to --

15 MS. KAPLAN: Well, it would be restitution to the
16 clinic.

17 THE COURT: -- the clinic.

18 MS. KAPLAN: Yes.

19 THE COURT: Yes. Okay. So, I think I am simply going
20 to make that restitution in addition to forfeiture as well.

21 MR. CRUZ: Yes, your Honor. And, for the record, I
22 just want to note my objection to the Court's denial of the
23 supplemental Rule 29 motion, and for purposes of the record I
24 would state that the 3,500 should be parsed down to 1,500 if
25 the Court were to divorce the 2,000 that is the subject of the

1 supplemental Rule 29 from the equation.

2 THE COURT: Right. I would reformulate, obviously,
3 the money judgment to include only \$1,500 forward from Count
4 Three, if I allowed it, but, of course, I am not going to.

5 MR. CRUZ: Thank you.

6 THE COURT: So, that is where it stands now for those
7 purposes.

8 So, are there any other issues that we need to take up
9 before going to the actual question of sentencing?

10 MS. KAPLAN: So, I just want to make sure. It sounds
11 like you have the letter from Victor Torosyan. Do you also
12 have the letter from his wife?

13 THE COURT: Yes, I do.

14 MS. KAPLAN: Okay.

15 THE COURT: The letter from Mr. Torosyan, apart from
16 claiming money, was July 8th, and the letter from Mrs. Torosyan
17 does not bear a date, but I think it came in about
18 October 16th. Right?

19 MS. KAPLAN: Yes.

20 THE COURT: Anything else that we need to take up,
21 then?

22 MR. CRUZ: Your Honor, just to be clear for the
23 record, there was an overarching Rule 29 motion for Counts
24 Three and Four.

25 THE COURT: Right.

1 MR. CRUZ: That, I believe, argument is precluded to
2 the extent there was a stipulation.

3 THE COURT: Right.

4 MR. CRUZ: What I would state to the Court is that the
5 stipulation was entered into based upon the belief that the
6 Department of Public Health certification received by the
7 clinic was sufficient to qualify Allied Health as a health care
8 benefits program under the statute.

9 THE COURT: Well, there are two parts to that. There
10 also was a *nunc pro tunc* certification by the federal
11 authorities, as I recall.

12 MR. CRUZ: Yes, your Honor, and it didn't become
13 apparent until the course of the trial that there was lack of
14 evidence, I would suggest, regarding treatments being actually
15 made to patients during the relevant time period and requests
16 for reimbursement from these insurance carriers, which I think
17 arguably was the motivation to file the Rule 29s, because that,
18 I think, is the more crucial issue, whether monies were
19 received for services rendered from these insurance carriers.
20 But I just want to state that for the record.

21 THE COURT: Okay. I think I understand the issue. My
22 view is that the certification puts this entity into a position
23 of being subject to the protection of the *Federal Criminal*
24 *Code*, and the *nunc pro tunc* quality of it indicates when that
25 was, and it is well before these transactions.

1 MS. KAPLAN: There is one issue, your Honor, and I'm
2 not sure that this is the time in what you are about to do
3 next, but I thought I would bring it to the Court's attention.
4 Since we last were before you, it has come to the Government's
5 attention that David Tkhilaishvili has been providing
6 information to an inmate or other inmates about Victor Torosyan
7 such that the Watertown Police Department where Mr. Torosyan
8 lives has now been put on notice. I don't know what type of
9 investigation they have commenced. But we have seen the
10 information that Mr. Tkhilaishvili has provided, and it's all
11 the same stuff that came out at trial. So, again, I'm just
12 bringing it to your attention.

13 THE COURT: Well, I do not know what I should do about
14 that. If you are saying I should consider post-verdict call it
15 retaliatory action against Mr. Torosyan as part of an
16 enhancement as to Mr. Tkhilaishvili, I would like to, of
17 course, hear from Mr. Cruz. That may just simply open up an
18 additional dimension to this. It is also, I suppose,
19 independently prosecutable as obstruction of justice if all of
20 the elements are met. I think my inclination at this stage is
21 to say I am simply not going to consider that, if it's true,
22 because it will simply extend this sentencing process here, and
23 it is sufficiently divorced from the trial itself and the
24 relevant conduct at the trial that I think it is improvident to
25 review it.

1 MS. KAPLAN: Okay.

2 MR. CRUZ: And for the record, your Honor, this is the
3 first that I have heard of this, so I wouldn't be prepared to
4 respond, in any event.

5 THE COURT: Right. Well, I think we have reached -- I
6 have tried to do this in an orderly fashion, but order takes
7 time, and I do not want to take any more time to get to this.

8 So, back to where we were before. With respect to
9 David Tkhilaishvili, we are dealing with a total Offense
10 Level of 20, a Criminal History Category of X [phonetic]. That
11 leads to a guideline range of 37 to 46 months, supervised
12 release of 1 to 3 years, a fine of \$1,500 to \$150,000,
13 restitution that I am setting at \$3,500. That is a little
14 different from what Probation had outlined. And there is a
15 Special Assessment of \$400, \$100 on each of the counts.

16 I assume we are dealing with the same set of numbers
17 here; is that correct?

18 MS. KAPLAN: Yes, your Honor.

19 MR. CRUZ: Your Honor, I do agree, with the caveat
20 that I will be arguing that the Court should depart to
21 Category I for various reasons cited in the memo.

22 THE COURT: Right. But in terms of the literal terms
23 of the guidelines, I take it there is not an objection about
24 that?

25 MR. CRUZ: Correct.

1 THE COURT: And then, with respect to Jambulat
2 Tkhilaishvili, we are dealing with a total Offense Level of 20,
3 a Criminal History Category of I. That leads to a guideline
4 range of 33 to 41 months' incarceration, 1 to 3 years of
5 supervised release, \$1,500 to \$150,000 in fine, and a Special
6 Assessment of \$200.

7 Are we dealing with the same set of numbers?

8 MR. TUMPOSKY: That's correct, your Honor.

9 THE COURT: Okay. So, Ms. Kaplan, I will hear you on
10 the Government's recommendation.

11 MS. KAPLAN: Oh. I thought I had made mine last time.
12 You want me to go through it again?

13 THE COURT: Yes, if you will, just because we have
14 been through several iterations of the issue.

15 MS. KAPLAN: Okay. Taking into account the sentencing
16 factors under 3553(a), your Honor, we believe -- and we are
17 talking about David?

18 THE COURT: David first and then Jambulat.

19 MS. KAPLAN: Okay. With respect to David
20 Tkhilaishvili, we believe that -- the Government recommends a
21 sentence at the high end of the sentencing guideline range, and
22 we believe this is sufficient but not greater than necessary to
23 comply with the purposes of the *Sentencing Guidelines*.

24 THE COURT: Let me just ask --

25 MS. KAPLAN: Yes.

1 THE COURT: -- you use "high end of the guidelines,"
2 rather than a particular number. I just don't know --

3 MS. KAPLAN: Forty-six months, your Honor.

4 THE COURT: Okay.

5 MS. KAPLAN: Looking at the nature and circumstances
6 of the offense, there is no question that the crime of
7 extortion is a serious offense. Your Honor, you presided over
8 the trial and you heard about the defendant's conduct with
9 respect to the victim in this case and the threats to harm him,
10 his family, his business. You also heard about during the
11 trial a threat -- well, I think it was during the trial -- a
12 threat to kill one of the FBI Agents. The defendant made a
13 decision to take the law into his own hands with respect to
14 Allied Health and the victim in this case, and he should not
15 have done that.

16 Looking at this particular defendant and his
17 particular role in the offense, we believe that a sentence of
18 46 months is appropriate to address several specific concerns.
19 First, the defendant threatened the victim's family members,
20 and under Section 2B3.2 the Application Note says that if the
21 offense involved a threat to a family member of the victim an
22 upward departure may be warranted.

23 Secondly, immediately prior to the trial the defendant
24 reached out --

25 THE COURT: But you are not asking me to make an

1 upward departure?

2 MS. KAPLAN: No, no. But that would be one of the
3 reasons for the Government seeking a high end of the guideline
4 sentence.

5 Second, immediately prior to the trial the defendant
6 reached out to a witness in the case in direct violation of the
7 Court's Order not to have contact with any of the witnesses.
8 He paid this witness, which the Government views as an attempt
9 to tamper with the witness or some sort of obstruction of
10 justice.

11 Similarly, your Honor may recall that after that
12 occurred and during the trial the defendant again disobeyed the
13 Court's instructions and order not to have contact with any
14 witness or person connected with the case, and he approached a
15 person who had accompanied Mr. Torosyan to court and told him
16 that Mr. Torosyan was a liar. This was yet another attempt to
17 intimidate this individual as well as get a message to the
18 individual in this case in direct contradiction of the Court's
19 Order.

20 And, finally, as I mentioned, when the agents arrested
21 the defendant, who had been in violation of the Court's Order,
22 the defendant David Tkhilaishvili threatened to kill the
23 FBI Agent.

24 This defendant clearly has no regard or respect for
25 the law. The way he behaved before and during the trial

1 demonstrates as much, and your Honor heard the tapes in this
2 case where he says he has no respect for the law and indicated
3 that he is above the law or believes he is above the law.

4 In the letters from the defendant's family they seem
5 to be under the impression that this defendant funded Allied
6 Health, when the evidence at trial was completely undisputed
7 that Allied Health was completely funded by Victor Torosyan,
8 and even in counsel's argument to the Court in the sentencing
9 memo that they filed the defendant accused the victim of having
10 taken his business, a business that was entirely funded by the
11 victim.

12 The victim, as you may remember, was a man who had
13 taken David Tkhilaishvili under his wing, had loaned him money,
14 had treated him like a son, given him a ring to give to
15 Mr. Tkhilaishvili's fiancée, gave him gifts, and the defendant
16 did nothing to thank him but stole all of his life savings and
17 took loans from him that he never repaid. He then threatened
18 to use physical violence to try and steal from him things that
19 were not his, and he left the victim in this case, a man who
20 came to this country with nothing and built up several
21 successful businesses, a shattered man and caused him great
22 emotional distress, not only to him, but, as you can see from
23 the letter from Mr. Torosyan's wife, great physical distress to
24 her as well. And he has shown no remorse even today. He is a
25 con man. He uses people, and he takes things by threatening

1 people, things that are not his.

2 The jury also heard from two other witnesses, your
3 Honor, who were employees of Allied Health that the defendant
4 got so angry at them he threw a table over, he went to hit
5 Kendrick (ph) Fabrick. And on another occasion the witnesses
6 reported that the defendant had hit the former girlfriend,
7 Kristina, while at work while he was in a rage.

8 These are the reasons, your Honor, that the Government
9 believes that a sentence at the high end of the guidelines
10 range is appropriate, it's necessary, it will promote respect
11 for the law, it will deter the defendant from engaging in
12 further criminal conduct and tell him that he cannot take the
13 law into his own hands, and that he cannot when he gets angry
14 threaten to kill people and extort them. It will protect the
15 public from further crimes of this defendant, and it will send
16 a message that threats to cause physical harm cannot be used to
17 settle business disputes, and such conduct will be prosecuted.

18 These are the reasons, your Honor, that the Government
19 is seeking a sentence of 46 months, supervised release of
20 3 years, restitution in the amount of \$3,500 to the Allied
21 Health, a Special Assessment of \$400, and a fine of \$1,500.

22 THE COURT: All right. Do you want to speak also to
23 Jambulat as well?

24 MS. KAPLAN: Oh, sure. Again, with respect to the
25 3553(a) factors, the Government is seeking a sentence at the

1 high end of the guidelines range, which is 41 months. Again,
2 this is a crime that is extremely serious.

3 THE COURT: Can I just pause on that?

4 MS. KAPLAN: Yes.

5 THE COURT: This is a deportable crime, right?

6 MS. KAPLAN: I'm sorry?

7 THE COURT: Deportable crime?

8 MS. KAPLAN: Yes. Yes, it is.

9 THE COURT: He will serve the time, and then the
10 assumption is that he will be deported?

11 MS. KAPLAN: I believe so. I believe so.

12 THE COURT: Okay. Go ahead.

13 MS. KAPLAN: With respect to this particular defendant
14 and his role, in his Sentencing Memorandum Mr. Tkhilaishvili
15 tries to pin all of the responsibility on his younger brother,
16 who he claims he was just following. But short of actually
17 writing the checks to himself and embezzling the money from
18 Allied Health, this defendant was with his brother in lockstep
19 every step along the way of this conspiracy to extort Allied
20 Health, including threatening to harm the victim, Victor
21 Torosyan. This defendant threatened Mr. Torosyan even when his
22 brother was out of the country. He did that on his own, not at
23 his brother's direction. Your Honor also heard at trial about
24 threats that Jambulat Tkhilaishvili made to another witness,
25 Olga, that if she wronged him he would cut her.

1 Mr. Tkhilaishvili argued that his family needs him and
2 depends on him, but he was not thinking of his family prior to
3 entering into this conspiracy to extort Mr. Torosyan, and he
4 has essentially ruined Mr. Torosyan's life needlessly.

5 We believe that a sentence of 41 months would promote
6 respect for the law, it will deter the defendant from engaging
7 in further criminal conduct, it will protect the public from
8 further crimes of this defendant, and, again, it will send a
9 message that threats to cause physical harm cannot be used to
10 settle business disputes, and this type of conduct will be
11 prosecuted. So, we are seeking a sentence of 41 months,
12 supervised release of 3 years, a Special Assessment of \$200,
13 and a fine of \$15,000.

14 THE COURT: I'm sorry. The period of supervised
15 release is?

16 MS. KAPLAN: Of 3 years.

17 THE COURT: Three years. All right.

18 So, Mr. Cruz.

19 MR. CRUZ: Your Honor, with regard to David
20 Tkhilaishvili, I am asking the Court to consider what is at
21 this point approximately 7 months and 11 days that he has been
22 held in custody since the conclusion of the trial. That, in
23 addition to time that he spent in custody prior to that
24 awaiting release on conditions, would equate to approximately
25 9 months or so at this point as a period of incarceration of

1 time served, followed by a period of supervised release of
2 2 years, the first 6 months of which would be served in home
3 confinement with electronic monitoring.

4 I suggest to the Court that this is the appropriate
5 sentence, first of all, because, although there is an agreement
6 with regard to the guideline calculation, I would suggest to
7 the Court that the Criminal History Category that is imposed
8 should more appropriately be a Category I as opposed to a
9 Category II. The entirety of his criminal history is
10 encapsulated in Paragraph 57 of the Presentence Report, which
11 is one case charging multiple counts of Assault With a
12 Dangerous Weapon. For that particular case the Probation
13 Department awards him four total criminal history points, three
14 of which are appointed under 4A1.1E. And an argument that I
15 raise in my Sentencing Memorandum, your Honor, is that it is
16 not an appropriate reading of that particular section of the
17 *Guidelines*, because what the Sentencing Commission originally
18 envisioned when amending that section of the *Guidelines* was
19 that a person who had committed multiple offenses at different
20 times could potentially receive a windfall if sentenced for all
21 of those things on the same date.

22 In this particular case we don't have an incident or
23 multiple incidents that are separated by time or intervening
24 arrests. What we have is one case involving multiple counts in
25 the same charging document for which he is being assessed four

1 Criminal History points. So, I am suggesting to the Court that
2 is not what this section of the *Guidelines* was geared toward
3 addressing, and that the Court should depart to Category I
4 under the circumstances. This was a Continuance Without a
5 Finding that resulted ultimately in a dismissal and no jail
6 time. So, to say that he is a Category II under these
7 circumstances I would argue is somewhat overstated. If the
8 Court were to agree that Category I applies, then the range
9 that would come to bear is 33 to 41 months, as opposed to 37 to
10 46 months.

11 THE COURT: That gets you closer to time served but
12 not much.

13 MR. CRUZ: Not much, your Honor, but I think that
14 there is something to be said for the floor being lowered
15 somewhat under the circumstances.

16 THE COURT: Well, what do I do with someone who is --
17 we use the phrase "anger management."

18 MR. CRUZ: Well, your Honor --

19 THE COURT: It is more than that.

20 MR. CRUZ: But I think --

21 THE COURT: It is part of the way in which he did
22 business.

23 MR. CRUZ: I think the Court has the hit the literal
24 nail on the head with regard to the reference to
25 anger-management issues. This is a person -- and the Court has

1 at length seen the testimony of Victor Torosyan, assessed him
2 as a witness, et cetera, and other factors that the Court heard
3 about at trial.

4 Also with regard to Mr. Tkhilaishvili, and as argued
5 previously, these are two people that were very similar in
6 terms of their personality. These are people who talked to
7 each other in the ways that the Court heard and that the jury
8 heard on that tape without incident prior to that. But at the
9 heart of all of this is an argument over this business.

10 And the Government suggests that all of Mr. Torosyan's
11 life savings were taken. The fact of the matter is that
12 Mr. Torosyan is still operating that business, that he has
13 opened a second business at another location and has plans to
14 open other branches.

15 THE COURT: Not to be arch about it, but through no
16 help of Tkhilaishvili. Is that the case?

17 MR. CRUZ: No, I understand, your Honor.

18 THE COURT: So, what we have is one person who
19 undertook to use illegal activity to advance his own business
20 interests and someone who, I suppose the argument is, could
21 give as good as he took but did not, and ended up relatively
22 better off than Mr. Tkhilaishvili but still not where he would
23 have wanted to be.

24 MR. CRUZ: No, your Honor. And, granted, we can't get
25 around the jury's finding in this case with regard to all of

1 these counts, but I think that the Court has, again, hit on an
2 important point, which is that Mr. Tkhilaishvili is someone
3 whose actions I would argue can be mitigated to a certain
4 extent, given the relationship that existed and, more
5 importantly, given Mr. Torosyan's own actions during the course
6 of the time that he is allegedly being threatened and that his
7 family is being threatened. He continues to work with Mr.
8 Tkhilaishvili and his brother through the end of 2015. This is
9 months after these threats have allegedly been made. He
10 appears with them at an opening party for the clinic, and he
11 brings his family there with absolutely no fear, I would argue
12 or suggest, of being harmed himself or having his family
13 harmed. He allows Mr. Tkhilaishvili access to his home in
14 Mashpee after he is threatened with bodily harm and his family
15 is threatened.

16 So, I would suggest that there's some level of proof
17 there that the Court can take in order to consider mitigation
18 in this sentence, albeit there is a violation of the law that
19 the jury found, but it is not to the extent or within the
20 heartland, I would suggest, of what the Court would routinely
21 see in a case like this, where acts of physical violence are
22 proven by the Government or other factors come to bear that
23 make this a much more serious situation, still a violation of
24 the law, but a much more serious situation, and that's why I
25 think the Court should consider to a certain extent departing

1 from what the guidelines say, at least as I have described
2 them.

3 In addition to that, your Honor, this is a man who has
4 never spent a day in prison, and he has spent the last
5 approximately 8 to 9 months in prison, and that has changed his
6 view, as the Court as read in his statement. This is not
7 activity or conduct that he wants to continue or repeat in the
8 future. He understands the consequences that come from
9 outbursts, if you will, because he is upset or because things
10 aren't working out with regard to his business relationships,
11 and the last thing that he wants to do is to continue to spend
12 time in jail where he is arguably not receiving -- and I
13 understand the Court has a view of what the Bureau of Prisons
14 can offer in terms of medical treatment -- but he is not
15 receiving adequate medical treatment with regard to his
16 diabetes.

17 He is separated from his business, which is literally
18 hanging on by a thread at this point. They've lost employees,
19 although they're still open, and the business is being run to
20 the extent possible by friends and/or his relatives who aren't
21 in a position really to do this successfully, because they were
22 never a part of it previously.

23 In addition to that, your Honor, his relationship with
24 his fiancée is in jeopardy, because her fiancée visa would
25 expire at the end of this year unless he continues with her in

1 this process.

2 So, there is a lot on the line here in terms of
3 consequences of an extended period of incarceration, not the
4 least of which is his connection to his parents, who are here
5 in court, who rely on both him and his brother to take them to
6 medical appointments, to see to their well-being generally, to
7 lend them support financially, and they're on their own
8 literally at this point, getting by as well as they can, but
9 they are devastated by this. And I understand that there's
10 some blame to be cast here, but he doesn't want them in that
11 position, he wants to help them.

12 And he wants the Court to know that it shouldn't worry
13 about his continuing to do these things. This was a unique
14 situation involving a relationship with Victor Torosyan. There
15 is no evidence in his prior criminal history that he has been
16 convicted or charged of anything like this in the past, and it
17 is a result of his and other individuals' personalities.

18 He wants the Court to be just as I know it will with
19 regard to sentencing, and he wants an opportunity to prove to
20 the Court that everything that Ms. Kaplan stated about what
21 happened pretrial -- and, your Honor, all of those things were
22 dealt with either in front of the Magistrate Judge with regard
23 to contacts with witnesses, those were all addressed in front
24 of the Magistrate Judge and shown to be, albeit not proper use
25 of judgment in paying an individual who he owed money to at

1 that particular time, but the Magistrate Judge heard all of
2 those things and still released him.

3 In addition to that, this issue of accusing him of
4 wanting to kill an arresting agent, I believe that what the
5 report said was he said, "God kill you," which, again, is part
6 and parcel to what we have in this case, which is an emotional
7 outburst with regard to a frustrating situation but not an
8 actual attempt or desire to hurt anyone. So, all of these
9 things can be addressed under these circumstances I have
10 suggested to the Court.

11 Nine months is a long time for him, and it has been a
12 long time, through which he has literally re-thought his
13 personality and what he wants to do with his life while sitting
14 in jail and its effects and its consequences on the rest of his
15 life and the individuals whom he loves. And he wants an
16 opportunity to prove to the Court that he can change his
17 behavior, and that if there is any contact in the future -- or
18 that there won't be any, I should suggest, any contact with
19 Mr. Torosyan whatsoever. These are things the Court through
20 the Probation Department can monitor and assure that no one is
21 going to be in harm's way, and that he will do as he has
22 promised or suggested that he won't repeat this behavior in the
23 future. Thank you.

24 THE COURT: All right. Thank you.

25 Mr. Tkhilaishvili, I will hear from you, if there is

1 something you would like to say at this point.

2 MR. CRUZ: Your Honor, before Mr. Tumposky starts,
3 Mr. Tkhilaishvili just wanted me to refer to the letters that
4 were submitted on his behalf.

5 THE COURT: Yes. I have them, and I have been through
6 them as well.

7 MR. CRUZ: Thank you, your Honor.

8 THE COURT: But this is an opportunity for him to
9 speak directly in open court, if he chooses to. He does not
10 have to, but he has that opportunity.

11 MR. CRUZ: And he would rest on what has been
12 submitted as a personal statement. Thank you.

13 THE COURT: All right. Thank you.

14 So, Mr. Tumposky.

15 MR. TUMPOSKY: Yes, your Honor. On behalf of Jambulat
16 Tkhilaishvili, I am also asking for a sentence of time served,
17 which would be approximately 8 months between the time of the
18 verdict to now and the pretrial detention, and I do that for
19 several reasons.

20 Until 2015 Mr. Tkhilaishvili was living what some
21 might describe as the classic American dream. He came here
22 with very little. He worked hard in not very big jobs but sort
23 of menial jobs, delivering pizzas, driving patients for a
24 dentist's office. He was trying to do what he could to support
25 his family, to make a living, to try and better his life, and

1 this was the life that he lived from the time that he came here
2 and until the time that he got involved with the clinic and
3 with Mr. Torosyan.

4 He doesn't have any record of any criminal conduct
5 before this. His conduct while he was on release was
6 exemplary. This incident that he has been convicted of really
7 stands out as aberrant in the life that he has led since he has
8 been in the United States, your Honor. And so, the question is
9 what should the Court do about what he was convicted of?

10 Now, the Government says in their presentation these
11 two, they were all in it together, there's no difference
12 between Jambulat and David. The Court sat through the
13 testimony at trial, and I would suggest that's simply not the
14 case; that, in fact, Jambulat Tkhilaishvili was not there every
15 step of the way with his brother. He really had no involvement
16 in the business at all, quite frankly, and stood to gain
17 nothing, the evidence showed at trial. Even if the extortion
18 had been successful he stood to gain nothing. He did not take
19 a single dollar in money from that business. He didn't even
20 work there. He was still working at the pizza place while
21 others were running the clinic. And so, this notion that he
22 was an equal and alongside David every step of the way is
23 simply untrue.

24 So, I think the Court should take that into account,
25 understanding, yes, he has been convicted of two serious

1 crimes, and I say "serious" in that the allegations in any
2 federal crime is serious. But I think I have to point out,
3 your Honor, that if Mr. Torosyan had gone to the Quincy Police
4 Department instead of his civil lawyers or the FBI, that the
5 sentence these two would be facing would be far different, and
6 he could have very easily gone in this direction as a state or
7 local offense, rather than a federal offense. He'd probably
8 get 6 months of probation with someone with his record and
9 where there was no actual physical injury to the victim, and I
10 think the Court should take that into account as well.

11 He has his wife that he supports, her child. His
12 parents who are here, they are elderly, he supports them as
13 well, or at least he was while he was out.

14 And, as the Court noted, there is a possibility of
15 deportation in this case, but it isn't certain. It isn't
16 certain. And so, the sentence that the Court gives will
17 actually have an impact on that. So, the question I think the
18 Court might want to ask itself is, yes, he has done something
19 wrong, but has he forfeited his right to be here forever? Has
20 he forfeited his right to live with his wife, to support his
21 parents and to support his wife's child forever?

22 And so, I'm asking for a sentence of time served
23 because I think it's appropriate, given his prior record, his
24 conduct on release, which is exemplary, his relative
25 involvement in the criminal case, and his family and what he

1 has tried to do positively, as the letters indicate, for his
2 family.

3 Now, I also want to give an alternative to the Court,
4 if the Court feels that a sentence of time served isn't
5 sufficient, and that is a sentence of 11 months on Count One
6 and up to 11 months on Count Two. A sentence of 11 months on
7 either count, either concurrent or consecutive, would
8 potentially, potentially protect his right to remain in the
9 United States. If the Court gives him more than that, his
10 deportation is almost certain.

11 And so, I would ask the Court to consider a sentence
12 of time served or, alternatively, 11 months on Count One and
13 11 months, if necessary, on Count Two to run on and after, if
14 the Court truly believes that a longer sentence is necessary,
15 give him the opportunity, however slim it might be, when he
16 gets out to remain in the United States, continue to work hard,
17 as he was doing before, continue to support his wife and her
18 child, and continue to support his elderly parents. Thank you.

19 THE COURT: Thank you. Again, I will hear from
20 Mr. Tkhilaishvili, if he wants to speak at this point.

21 MR. TUMPOSKY: He'll rest on the letter that he
22 submitted, your Honor.

23 THE COURT: All right. Well, I guess I will start
24 with the larger question here, which is the potential for
25 disparity between federal embezzlement and state embezzlement.

1 The Congress made a choice to include this kind of activity in
2 the Hobbs Act and it was, I think, a considered choice, that
3 there are certain kinds of activity that, because of their
4 effect on interstate commerce and their character, are ones
5 that require the attention of the Federal Government. I am
6 putting to one side the question now of health care violations.

7 It is a serious offense. It is at the same time at
8 the crossroads of federalism, and so I do want to be sensitive
9 to how this would be treated in the State Court as opposed to
10 in the Federal Court, not because I think there is parity, but
11 to be sure that, as a cross-check, I understand the seriousness
12 of the offense and the choice to have it here as opposed to
13 elsewhere.

14 But I start, then, with the idea of the seriousness of
15 the offense. I think it is a very serious offense. In the
16 case of David Tkhilaishvili it is compounded by interference
17 with a kind of business that is servicing the most vulnerable
18 and ought to be handled with great integrity. It was not.
19 That does not appear to be his *modus operandi*. Rather, it is a
20 choice to engage in business in a manner that is suffused with
21 threats of violence, which I discount to some degree as
22 cultural, but not entirely.

23 This is heartland Hobbs Act extortion, as far as I am
24 concerned. Congress meant it. It is my obligation to deal
25 with it in that fashion.

1 I look at the character of the defendant, and, while I
2 do not see here the long-range criminal activity, I do not view
3 the previous conviction, which I will assimilate as one item
4 intellectually as opposed to how the guidelines are treated, as
5 being aberrant nor this being aberrant. This is an individual
6 who chooses to conduct his affairs with others, no matter how
7 he conducts his affairs with his family, with others in a
8 threatening fashion, who feels no particular obligation to
9 comply with the law, no particular obligation to comply with
10 rules that are established by the Court, and, frankly, offers a
11 pretextual explanation for why he cannot bring himself to
12 comply.

13 In short, I find here nothing that would cause me to
14 mitigate the application of the guidelines as a framework
15 having to do with the nature and characteristics of the
16 defendant.

17 Mr. Cruz makes the point that the defendant has never
18 spent much time in jail. Well, that is not a way to stay out
19 of jail; that is simply a way of saying that perhaps things
20 have not become as clear to him as they should have. I have
21 considerable concern as a matter of specific deterrence
22 regarding this individual's enlargement prematurely. It is, it
23 seems to me, very important for this defendant to understand
24 that the costs of engaging in activity like this, even with
25 someone who responds in a somewhat aggressive fashion himself

1 but not with violence or threats of violence, cannot be
2 countenanced, and the consequences will be severe. That is
3 what the guidelines here speak to, and they seem to me to be
4 appropriate.

5 I also look in terms of general deterrence. There is
6 a kind of subtext here that this is cultural, that this is just
7 the way people talk, the way they relate kind of
8 aggressiveness. I do not really buy that. What I see here is
9 an unwillingness to accept conventions of business activity
10 that it is very important for this country to uphold and not to
11 give some special discount to someone who cannot comply with
12 those conventions.

13 I would not like to leave it as a matter of general
14 deterrence that this is the kind of thing to be winked at, or
15 ignored, or treated as if it does not belong in the Federal
16 Court.

17 I am aware of considerations having to do with the
18 prison system, a claim of difficulties in medical care. Of
19 course, I have considered that, although, as Mr. Cruz
20 indicated, I have also come to the conclusion that the medical
21 conditions that the defendant complains of are ones that the
22 Bureau of Prisons can deal with effectively and does on a daily
23 basis.

24 I have also looked at the question of disparity. I
25 have some sense of the range of sentences for offenses like

1 this. I think the guidelines are a bit high for ultimately
2 unexecuted threats in this area, and, consequently, I am going
3 to vary from the guidelines themselves. I am going to impose a
4 sentence of 36 months' incarceration. I will impose a period
5 of 3 years of supervised release. I am going to impose a
6 \$3,500 restitution figure.

7 I will not impose a fine under these circumstances.
8 It seems to me that, given the interrelationship of family and
9 family needs, that taking a fine as well would be further
10 inflicting harm on family members who were not complicit in
11 this criminal activity. I emphasize what I think we all
12 understand, which is to say that there are multiple victims,
13 including victims like his parents, but those are people who
14 were the collateral damage created by his activity for which he
15 is responsible, and, while some mitigation is appropriate in
16 the sentence, that is, to speak specifically to the fine, it
17 seems to me that the family members who were not directly
18 involved cannot be held hostage to the defendant's misconduct.

19 There will be a forfeiture order, money judgment
20 forfeiture order entered as well. And there must be a Special
21 Assessment of \$400 imposed.

22 There are the customary mandatory conditions of
23 supervision: that the defendant not commit another federal,
24 state or local crime, that he not unlawfully possess a
25 controlled substance, that he refrain from any unlawful use of

1 a controlled substance, and I will require that he submit to
2 one drug test within 15 days of his release from prison and for
3 as many as 104 drug tests per year by Probation. This is not
4 someone who has a history of drug problems. On the other hand,
5 this is a person who has a demonstrated inability to conform
6 his lifestyle to matters that can be productive and who could
7 well, in my estimation, find himself leading into drug use.
8 And so, I mean to have the Probation Office supervise that as
9 they see fit within that range.

10 There is an obligation that he cooperate in the
11 collection of DNA as directed by the Probation Office.

12 In addition to the standard conditions of supervised
13 release, I am going to require him to participate in a drug
14 treatment program. There is a certain irony involved here that
15 he chose to exploit the drug difficulties of vulnerable people.
16 It seems to me important for him to understand with some
17 particularity who those people are by participation in a drug
18 treatment program.

19 He is obligated to pay the balance of restitution and
20 the money judgment immediately, but if he cannot pay it
21 immediately, then according to a Court-ordered repayment
22 schedule.

23 He is prohibited from incurring any new credit charges
24 or opening additional lines of credit without the approval of
25 the Probation Office while any financial obligations are

1 outstanding. He is obligated, while those financial
2 obligations are outstanding, to provide any requested financial
3 information to the Probation Office, and that may be shared
4 with the United States Attorney's Office Financial Litigation
5 Unit.

6 He is specifically required not to knowingly have any
7 contact, direct or indirect, with Mr. Torosyan and his
8 immediate family.

9 Turning, then, to Jambulat Tkhilaishvili, I accept the
10 argument that Mr. Tumposky has made that there is a disparity
11 in the involvement here and that he is not at the core of
12 creating this business environment that his brother, David, did
13 that falls within the heartland, as far as I am concerned, of
14 Hobbs Act extortion. That having been said, this is serious
15 business, and he lent himself to the larger purposes of
16 extortion here, the effort to suffuse the atmosphere with
17 threat, lest the business be conducted in a way that,
18 improperly, he and his brother wanted to have it conducted.

19 I am going to impose a sentence of 18 months'
20 incarceration here on Jambulat Tkhilaishvili. Mr. Tumposky
21 tells me it makes a difference what the length of particular
22 sentences are. I don't know that, but what I will do is make
23 it 9 months on Count One, 9 months on Count Two. They are
24 consecutive. If that makes a difference, that is a matter for
25 the immigration authorities. But that is meant, 18 months in

1 aggregate, to reflect the seriousness of the offense here.

2 In terms of personal characteristics, I buy much of
3 what Mr. Tumposky has said here, a hard-working man attempting
4 to deal with a series of family dimensions that are
5 challenging. But he did not simply allow himself to be drawn
6 in. He lent himself to this activity, and that, it seems to
7 me, is something that overcomes the particular problems or
8 family issues that are created by that.

9 The question of specific deterrence I think is
10 adequately addressed by the 18-month sentence here for Jambulat
11 Tkhilaishvili. It seems to me that he has a greater sense of
12 remorse than his brother does, and it was demonstrated to me by
13 observation throughout. But there is a general deterrence
14 that, it may be your brother, but you do not help him out in
15 Hobbs Act extortion, and others who are facing that sort of
16 thing should understand that there are consequences for a
17 choice that does help out a brother by lending yourself to
18 Hobbs Act extortion, and others who are faced with that sort of
19 thing must address it, and to understand that there is no
20 cultural-difference discount that is appropriate for this kind
21 of conduct, this kind of threat.

22 I have looked at the question of jail, prison, to see
23 whether it should inflect my judgment here. It does not. It
24 seems to me to be a neutral factor here. I do recur to my
25 understanding of the range of sentences that are imposed for

1 non-executed threat cases that are Hobbs Act cases. This seems
2 to me to be a not-disparate sentence for someone in the
3 position of Mr. Jambulat Tkhilaishvili.

4 The short of it is that this is a serious offense in
5 the Federal Court. It is not the most serious, but it is a
6 serious offense, not the most serious of Hobbs Act cases, but
7 it is a serious offense, and it cannot go without substantial
8 consequence. The substantial consequence that I have imposed
9 is in both cases a departure from the guidelines themselves,
10 which seem to me to be, for these circumstances, a little bit
11 severe, more than a little bit severe. This sentence is
12 tailored to try to deal with that issue.

13 Now, turning to the specifics of supervised release
14 for Jambulat Tkhilaishvili, I am going to impose 3 years of
15 supervised release upon him as well. It is very important that
16 he be subject to the supervision of the Court if he is not
17 deported in this case. The question of whether he will be
18 deported is, of course, an open question.

19 He is obligated to pay a Special Assessment of \$200.
20 I will not impose a fine under these circumstances.

21 Why do I use 3 years of supervised release? Well,
22 because if he gets involved in this kind of thing again in any
23 way, he should understand that he is subject to further
24 consequences. He has to conform himself here.

25 Part of this, of course, is the standard conditions of

1 supervised release, the mandatory ones, that he not engage in
2 another federal, state or local crime, and that he not possess
3 a controlled substance. I see no reason to impose drug testing
4 on him at this time, apart from the obligation to submit to one
5 drug test within 15 days of release and at least two periodic
6 drug tests thereafter. If there appears to be some sort of
7 problem, Probation will bring it to my attention.

8 He is obligated to cooperate in the collection of a
9 DNA sample, as directed by the Probation Office.

10 The standard conditions are those that are set forth
11 in the *Guidelines*. I will not rehearse them again here, but
12 there is a special condition, because of his vulnerable
13 immigration status, and that is that if he is ordered deported
14 he is obligated to leave the United States and not to return
15 without the prior permission of the Secretary of the Department
16 of Homeland Security. He is obligated to use his true name,
17 and he is prohibited from the use of any false identifying
18 information, and that includes but it is not limited to any
19 aliases, or false dates of birth, or false Social Security
20 numbers, or incorrect places of birth.

21 He is, of course, obligated to pay a Special
22 Assessment of \$200. That is due immediately. I suspect that
23 it will be handled through a prison financial-responsibility
24 program, so I make no further conditions with respect to that.

25 I think I have been as clear as I can about my view of

1 the seriousness of this offense. It is not something to be
2 ignored, not something to be sloughed off by letters to the
3 Court indicating that the defendant has seen the light in
4 particular ways. I have no doubt that the experience of being
5 in custody here has been eye-opening for the defendants, but
6 the amount of time in custody should reflect the seriousness of
7 offense. This set of sentences I think does that.

8 Both of the defendants should be aware that they have
9 a right of appeal. They will want to consult counsel with
10 respect to that. There has already been an indication, of
11 course, that that is possible or likely.

12 Now, are there any other conditions that the parties
13 or Probation would ask me to consider?

14 THE PROBATION OFFICER: No, your Honor.

15 THE COURT: Ms. Kaplan, anything?

16 MS. KAPLAN: No, your Honor.

17 MR. CRUZ: Your Honor, I would just ask the Court to
18 consider making a recommendation on Mr. Tkhilaishvili's
19 judgment that he be designated by the Bureau of Prisons to FMC
20 Devens, if at all possible. It would serve two purposes,
21 including having his family accessible and dealing with his
22 medical issues.

23 THE COURT: I think I will make the recommendation
24 with respect to Devens. It is, as you know, a recommendation.
25 They are not required to follow it. But the recommendation

1 will be Fort Devens or such other facility that can attend to
2 his medical needs and as close as possible to his parents.

3 MR. CRUZ: Thank you, your Honor.

4 MR. TUMPOSKY: And I would ask for a recommendation
5 that he be assigned as close as possible to the Boston area,
6 which I think would be Berlin or Danbury.

7 THE COURT: I will make that. I am not going to make
8 a Devens recommendation for him.

9 MR. TUMPOSKY: No.

10 THE COURT: But I will make the general area.

11 MR. TUMPOSKY: Thank you.

12 THE COURT: Is there anything further that we need to
13 take up?

14 MS. KAPLAN: No, your Honor.

15 MR. CRUZ: No, thank you.

16 THE COURT: All right. Then, we will be in recess.
17 Thank you.

18 THE CLERK: All rise.

19 (The Honorable Court exited the courtroom at 11:23 a.m.)

20 (WHEREUPON, the proceedings adjourned at 11:23 a.m.)
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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *United State of America v. Tkhilaishvili, et al.*, No. 1:16-cr-10134-DPW.

Date: 04/30/18

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter